Filed 2/15/05 Evans v. Camp CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THOMAS A. EVANS, Plaintiff and Respondent, v. THOMAS F. CAMP, Defendant and Appellant.	A102835 (Contra Costa County Super. Ct. No. C00-00729)

I. INTRODUCTION

In this case, a jury found that attorney Thomas Camp defrauded his client, respondent Thomas Evans, in two real estate transactions. The jury also found that Camp was negligent and committed legal malpractice. The jury awarded Evans $2,042,044.40, an award that was reduced to $1,563,414 by the trial court. The jury also awarded $80,000 in punitive damages.

Camp contends that (1) Evans's fraud claims as to the two real estate transactions are barred by the statute of limitations; (2) the jury's award of $730,516 for Camp's negligence in managing Evans's financial affairs is not supported by substantial evidence because there was no expert witness as to the standard of care required of a "trustee"; (3) the trial court erred in not instructing the jury on the concept of "continuous representation"; and (4) the jury's punitive damages award is excessive. None of these claims has merit. We affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

In 1989, Evans, a drug addict whose business had failed, was about to begin a four-year prison term for armed robbery.[1] On the positive side of his personal ledger, however, Evans had $850,000 in cash to invest, money that came from the proceeds of the sale of real estate Evans had inherited from his parents.[2]

Making a choice that later proved to be disastrous, Evans hired Camp to help him defer paying tax on this money by investing in a tax deferred "Starker" exchange. Evans hoped to generate income while he was in prison and could not be involved on a day-to-day basis with his investments. At Camp's direction, Evans invested his money in two properties. Ultimately, Evans lost most of his investment.

West Lane Plaza

The first property Camp recommended that Evans buy was a shopping center in Stockton, California, called West Lane Plaza. On Camp's advice, in January 1989 Evans acquired a 72% interest in this property. He put approximately $745,000 down and signed a promissory note for $2.5 million. Although the shopping center syndicator from whom Evans acquired this interest generally sponsored limited partnerships, which required that investors meet income and asset requirements, Camp and the syndicator structured the purchase in such a way that Evans was permitted to invest without having to meet any income or asset guidelines.

The syndicator was paid a $220,000 fee, which was among the higher fees charged by the syndicator. Evans paid $158,000 of this fee. Camp told Evans this investment would generate about $5,000 a month in income. West Lane Plaza never generated the income Camp said it would.

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[1] Evans, in fact, served two years of his four-year term. He was released from prison in 1991.

[2] Evans had previously owned these properties with his brother, Bill, who had managed his investments for him. Bill, who did not like his brother's lifestyle, decided to "go his way" and their jointly held properties were sold, netting $850,000 for Evans.

In fact, a little over a year after Evans invested in the shopping center, and while Evans was still in prison, the managers of the shopping center made a $100,000 "cash call" on Evans and the other shopping center owners. Evans owned three pieces of unencumbered property at that time and Camp proposed that he borrow $125,000 to meet the cash call, using these properties as security. Evans, who believed that the shopping center needed $125,000 or it would go into foreclosure, agreed to Camp's proposal. He borrowed $125,000, using the three properties as collateral. Evans paid the interest on the loans, but at some point he simply did not have sufficient income or assets to continue making these payments. The properties were ultimately foreclosed on and Evans lost them.

In 1996, the shopping center's manager, Milt Perlow, proposed that Evans transfer his interest in the shopping center to a limited partnership in order to refinance the loan on the shopping center, which was having financial troubles. Perlow recommended that Evans transfer title to a limited partnership because Evans himself had "no credit, no money," had not filed any tax returns and, therefore, could not qualify for a loan, while the limited partnership could.

In 1997, Evans began to reconcile with his brother, Bill, who along with Evans attended a meeting to discuss the refinance proposal, which Evans ultimately did not agree to. In his brother's opinion, Evans "knew absolutely nothing" about the workings of the shopping center.

On August 4, 1997, Evans, with the assistance of his daughter, wrote a letter to the California State Bar in which he complained about Camp's performance. Among other things, he complained that Camp had improperly managed his finances.

In March 1999, Evans, Evans's brother Bill, Camp and Milt Perlow met in Camp's office to, in the words of Bill Evans, get "Camp to help us find out what was going on with the refinancing and everything about the shopping center. We needed some help. We needed some guidance. We needed more information." Evans testified that he didn't understand the West Lane Plaza transaction and that his brother asked for but never got information about the transaction. In February 2000, after Perlow was unable to

refinance the loan on the property, the shopping center went into foreclosure and Evans lost his entire investment in it.

Newman Property

After recommending that Evans invest in West Lane Plaza, Camp recommended that Evans use most of his remaining money -- $96,000 -- to buy an interest in a forty-acre parcel of farmland in Newman, California. Before doing so, Evans went down to look at it with Camp. Camp pointed out a subdivision next door to the property, and told Evans that development would be "coming right through there." He did not, however, tell Evans that the subdivision was in the City of Newman and the 40 acres were not. Camp "more than encourage[d]" Evans to invest in the property; he made it seem urgent that Evans do so. Evans followed his advice and relied on Camp in making the decision to invest. Camp did not tell Evans there were any risks associated with the investment. To the contrary, he told Evans the investment was a "great deal" and that he (Evans) would make money on it.

While he was looking at the property, Evans met a Mr. Cambra, whose garage, cars and trucks were on the property. Cambra was renting the Newman property. Cambra was Camp's client. Camp testified that he learned about the Newman property when he represented Cambra in connection with his default on the lease on the Newman property. A proposal was made that Camp and Cambra buy the property and wrap the default into the purchase price. Cambra asked Camp to join him in buying the property, which the owner was willing to sell to them for what she had paid for it a decade or so earlier. Camp and Cambra purchased the property for $123,000 in March 1989. Camp put in $29,000 in cash. He agreed to assume an existing loan secured by the property for $44,000 and placed a second mortgage on the property in the seller's favor in the amount of $57,000. At the end of the transaction, there were $102,000 worth of loans against the Newman property. Cambra and Camp agreed that Cambra would own sixty percent of the property and Camp forty percent. Cambra did not put up any money. Cambra's back rent of $7,000 was also rolled into the purchase price.

Camp testified that, while he was negotiating the sale of the Newman property to himself and Cambra, he was also aware that Evans had an additional $96,000 available for investment in another property. Camp did not consider simply offering the opportunity to buy an interest in the Newman property to Evans, rather than buying it himself. Instead, twenty days after Camp and Cambra acquired the property for $123,000, they sold Evans a 20% interest in the property for $96,000. Despite the fact that Evans's $96,000 contribution constituted almost the entire purchase price paid by Camp and Cambra for the property, at the end of the day, Camp owned a 32% interest in the property; Cambra owned 48% of the property and Evans owned 20%.

In addition, out of the proceeds of the sale to Evans, Camp reimbursed himself the entire amount of his $29,000 investment in the property. He also kept the remaining $67,000 Evans put in the property. When Evans purchased his interest in it, the property was encumbered with liens totaling $102,000. None of the proceeds of the sale to Evans went to paying down this debt.

Evans did not know that Camp was planning to be an owner of the property. Evans was under the impression he was going to be in business with Mr. Cambra only. The terms of the purchase of the property were not disclosed to Evans. Instead, Camp told Evans the transaction was fair and reasonable. He also told him that he was required to make a full disclosure of the terms of the purchase in writing. However, in a letter written to Evans to comply with State Bar rules regarding attorney-client joint investments, Camp did not outline the terms of the Newman transaction.

In 1994, Camp was unable to make payments on the debts on the Newman property and the owner began foreclosure proceedings. Camp told Evans that the economy had gone bad and there was no building going on and "that's life." He did not tell Camp there was anything wrong with the investment. Instead, Camp proposed and Evans agreed that they would deed their interest in the property to an entity owned by Camp called West Side Transfer. Camp then filed a Chapter 11 bankruptcy petition for

West Side Transfer. Over the course of the next year or so, Camp sold three parcels of the Newman property to pay off debts on the property.

At the time of the transfer of the Newman property to West Side Transfer, Evans learned he owned 20 percent of the property, although he had believed he owned 70 percent. He did not know anything about the terms of the purchase. He also learned "there was money still owed on the property," although he did not know why and he got no explanation about these debts. In the August 1997 letter to the State Bar, he complained in general about Camp's performance. At that time, he believed Cambra had put an equal amount of money into the transaction. It was only shortly before the trial, that he learned how little money Camp and Cambra had put into the transaction. Evans testified that he would not have participated in the purchase of the Newman property if he had been told that Camp had bought the property at a lower price and sold it to him (Evans) at a higher price.

Evans sued Camp on February 22, 2000. The jury concluded that Camp had defrauded Evans in both transactions and had acted negligently and committed legal malpractice in the West Lane Plaza transaction.

With regard to the West Lane Plaza transaction, the jury unanimously found that Evans had not discovered nor should he have discovered through the use of reasonable diligence required of a client that Camp had acted negligently. The jury also found that Evans did not discover Camp's fraud before February 22, 1997. The jury also found, again unanimously, as to the Newman transaction, that Evans had not discovered nor should he have discovered "through the use of the reasonable diligence required of a client" "that defendant had defrauded him by a false representation or concealment, and that such had caused him harm, prior to February 22, 1997."

The jury awarded Evans $2,042,044 in damages, which was reduced by the trial court to $1,563,414. The jury also awarded $80,000 in punitive damages. This timely appeal followed.

III. DISCUSSION

A. *Statute of Limitations -- Newman Property Fraud Claim*

At the end of Evans's presentation of his case, Camp moved for a nonsuit. He argued that Evans's fraud claim on the Newman property accrued in 1994, when Evans deeded his interest in that property to West Side Transfer. Camp argued that the three-year statute of limitations for fraud ran, therefore, in 1997 and that Evans's lawsuit, filed in 2000, was untimely. The trial court denied this motion. The court ruled that Evans's fraud claim as to the Newman property accrued when he became aware that Camp had purchased the Newman property at below the market rate and then re-sold it to Evans for a much greater amount, a transaction Evans was not aware of until shortly before trial. We agree.

"A motion for nonsuit or demurrer to the evidence concedes the truth of the facts proved, but denies as a matter of law that they sustain the plaintiff's case. A trial court may grant a nonsuit only when, disregarding conflicting evidence, viewing the record in the light most favorable to the plaintiff and indulging in every legitimate inference which may be drawn from the evidence, it determines there is no substantial evidence to support a judgment in the plaintiff's favor." (*Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 27-28, (*Edwards*), italics omitted.) On appeal, "[w]e are bound by the same rules as the trial court. Therefore, on this appeal we must view the evidence most favorably to appellants, resolving all presumptions, inferences and doubts in their favor, and uphold the judgment for respondents only if it was required as a matter of law." (*Id.* at p. 28; *Cossman v. DaimlerChrysler Corp.* (2003) 108 Cal.App.4th 370, 375-376.)

Evans's fraud claim is governed by the three-year limitations period set out in Code of Civil Procedure section 338, subdivision (d), which provides that a cause of action for fraud "is not to be deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." As one court has explained, accrual occurs when the plaintiff discovers, or has reason to discover the cause

of action. (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383.) Thus, "the limitations period begins to run when the plaintiff has information that would put a reasonable person on inquiry. [Citation.]" (*Utility Audit Co., Inc. v. City of Los Angeles* (2003) 112 Cal.App.4th 950, 962 (*Utility Audit*).) The issue of whether the plaintiff exercised reasonable diligence in discovering the fraud is a question of fact. (*Allen v. Sundean* (1982) 137 Cal.App.3d 216, 222.)

Further, because Camp served as a fiduciary in locating and recommending investments to Evans accrual of the cause of action is "postponed" "until the beneficiary has knowledge or notice of the act constituting a breach of fidelity. [Citation.] The existence of a trust relationship limits the duty of inquiry." (*Eisenbaum v. Western Energy Resources, Inc.* (1990) 218 Cal.App.3d 314, 324 (*Eisenbaum*); *Hobbs v. Bateman Eichler, Hill Richards, Inc*. (1985) 164 Cal.App.3d 174, 202, 210 (*Hobbs*).)

With these legal principles in mind, we have reviewed the record in the light most favorable to the court's decision and conclude it supports the court's conclusion that Evans's fraud claim did not accrue in 1997. Camp did not tell Evans that he and Cambra had previously bought the property for a much lower price. In fact, Evans testified he did not know anything about the terms of the purchase and that Camp told him only that the Newman transaction was fair and reasonable. Evans learned how little money Camp and Cambra had put into the transaction only shortly before trial. Evans stated he would not have participated in the purchase of the Newman property if he had been told that Camp had bought the property at a lower price and sold it to him (Evans) at a higher price.

On appeal, Camp again argues that Evans's claim for fraud accrued in 1997, three years after the property went into foreclosure and Evans learned he owned 20 percent of the property rather than 70 percent and that "there was money still owed on the property," although Evans also testified he did not know why.

The trial court did not err in concluding that the information available to Evans when the property went into foreclosure did not put him on notice that he had been

defrauded. Evans was not a sophisticated investor who might have been expected to probe further when he learned that the details of an investment were not what he had originally thought. In fact, Evans's brother testified, "When it came time to sign[] documents, he never referred to them. He could hardly read. He never got out of high school. He would just sign them. He was very trust[ing] . . . ." Evans continued to trust Camp to act on his behalf during the time the Newman property was in foreclosure. In light of Evans's lack of sophistication and his reliance on his fiduciary to act on his behalf, the trial court not unreasonably concluded that, when Evans learned he had a smaller interest in the property than he'd thought and there were liens on it, he more likely attributed this information to his own inattentiveness and the worsening economy than to fraud.

In a similar case, *Allen v. Sundean, supra,* 137 Cal.App.3d 216, this court considered whether a statute of limitations had run on a cause of action for property damage, which like fraud, runs only when the plaintiff discovers, or through the use of reasonable diligence, should have discovered the claim. In *Sundean*, we found that a claim for fraudulent concealment of poor quality fill under a house did not accrue until a landslide took place on the property, despite the fact that there were some signs of problems with the soil prior to the landslide. The court pointed out that the plaintiff was a 74 year-old woman who had never been employed outside the home and had no "education, training, or experience in the field of construction or in soil mechanics" (*id.* at p. 222) and, therefore, "justifiably relied on information from other individuals as to the cause of [soil subsidence] and did not comprehend the true nature and extent of the conditions that eventually culminated in the landslide." (*Id.* at p. 223). Here, the functional equivalent of that landslide occurred only when Evans learned that Camp had actually purchased the Newman property for a significantly lower price than the one Evans paid, which the parties agree occurred well after 1997.

Relying on the "primary right" theory of pleading, Camp also argues that Evans's discovery that the Newman property was encumbered and he owned less than he thought amounts to a discovery that he had been defrauded and, therefore, is the date his claim for fraud accrued. The primary rights theory on which Camp bases his argument does not concern when a claim accrues for purposes of the statute of limitations. As our Supreme Court has explained the primary rights theory, and its corollary, the rule against splitting a cause of action, "is neither an aspect, nor a restatement of the statute of limitations." (*Hamilton v. Asbestos Corp.* (2000) 22 Cal.4th 1127, 1146.)

In essence, having bilked his unsophisticated and trusting client, Camp now argues that this client's failure to get to the bottom of the fraud against him should result in the loss of his fraud claim. We reject this unseemly proposal. As one court faced with a similar argument succinctly put it, "'No rogue should enjoy his ill-gotten plunder for the simple reason that his victim is by chance a fool [citation].'" (*Anderson v. Thacher* (1946) 76 Cal.App.2d 50, 70.) We agree that the courts should not "'lightly seize upon some small circumstance to deny relief to a party plainly shown to have been actually defrauded against those who defrauded him on the ground . . . that he did not discover the fact that he had been cheated as soon as he might have done.' . . . The possible but antiquated authority that one must assume that everyone with whom he has a business transaction is a rogue and act accordingly will not receive judicial approval." (*Ibid.*) Although Camp's behavior does nothing to counteract this assumption, we cannot conclude that Evans should have suspected earlier that his lawyer was a rogue. The trial court did not err in denying his nonsuit motion.[3]

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[3] The jury later found, of course, that Evans had not discovered nor should he have discovered "through the use of the reasonable diligence required of a client" "that defendant had defrauded him by a false representation or concealment, and that such had caused him harm, prior to February 22, 1997."

B. ***Statute of Limitations -- West Lane Plaza Fraud***

The jury concluded that Camp committed fraud when he intentionally concealed from Evans material facts regarding the West Lane Plaza purchase. The jury also found that Evans discovered this fraud after February 22, 1997,(and, therefore, within the statute of limitations). Camp, however, contends that Evans's fraud claim accrued shortly after Evans invested in West Lane Plaza in 1989, when Evans did not receive the $5,000 a month income he had expected to receive, and that substantial evidence does not support the jury's contrary finding. We disagree.

In making this argument, Camp again relies on the "primary rights" theory, suggesting that this theory establishes that Evans's fraud claim accrued as soon as Evans became aware of any difference between how he had expected his investment to perform and what actually took place. As we have noted, the "primary rights" theory does not define when a cause of action accrues for the purpose of determining when the statute of limitations begins to run. Rather, the general rule is that the statute of limitations on a fraud claim "begins to run when the plaintiff has information that would put a reasonable person on inquiry. [Citation.]" (*Utility Audit, supra,* 112 Cal.App.4th at p. 962.) Where, as here, "a fiduciary obligation is present, the courts have recognized a postponement of the accrual of the cause of action until the beneficiary has knowledge or notice of the act constituting a breach of fidelity. [Citations.] The existence of a trust relationship limits the duty of inquiry." (*Eisenbaum, supra,* 218 Cal.App.3d at p. 324; *Hobbs, supra,* 164 Cal.App.3d at pp. 202, 210.)

As Evans's fiduciary, Camp had a duty to "render a full and fair disclosure to the beneficiary of all facts which materially affect his rights and interest. 'Where there is a duty to disclose, the disclosure must be full and complete, and any material concealment or misrepresentation will amount to fraud. . . .' [Citation.]" (*Neel v. Magana, Olney, Levy, Cathcart & Gelfand* (1971) 6 Cal.3d 176, 188-189.) The jury found that Camp breached this duty because he did not disclose to Evans the considerable risks inherent in

the shopping center investment. The evidence available to the jury was that Evans was about to enter prison, had no income, no job or job prospects and, after Camp's recommendation that he invest almost all of his available cash in West Lane Plaza and Newman, no liquidity. Camp recommended that Evans acquire a 72% interest in a shopping center encumbered with a $2.5 million loan, pay a $158,000 syndication fee and subject himself to the possibility of mandatory cash calls. Camp told Evans the transaction was fair and reasonable and there is no evidence that Evans understood the risks inherent in this transaction. For example, despite the fact that the West Lane Plaza investment required that Evans meet a "cash call," Camp did not discuss with Evans whether he should keep any additional cash on hand for this purpose. In fact, Evans testified at trial, he did not know what "liquidity" was and thought there would be money left in his account with Camp. In failing to advise Evans about the details of and risks inherent in the West Lane Plaza investment, Camp failed to "render a full and fair disclosure to the beneficiary of all facts which materially affect his rights and interest." The failure to do so amounts to fraud. (*Id.* at pp. 188-189.)

Substantial evidence supports the jury's conclusion that Evans did not discover that Camp had not made a full disclosure of the risks inherent in this transaction until well after February 22, 1997, because Evans was not aware of the details of the transaction until after that date. In fact, it was not until February 1997 that Evans even began to seek information about the West Lane Plaza transaction. At a meeting on February 10, 1997, Evans asked Camp what a $220,000 payment in the escrow statement was for. However, Camp did not tell Evans that this payment represented a fee paid to the syndicators. Nor did he explain that Evans had paid 72% of that fee. Evans and his brother met with Camp and Milt Perlow in 1989 in Camp's office. At that time, they sought Camp's help in finding out "what was going on with the refinancing and everything about the shopping center. We needed some help. We needed some guidance. We needed more information." Evans testified that he didn't understand the

West Lane Plaza transaction and that his brother asked for but never got information about the transaction. Substantial evidence supports the jury's finding on this issue.

C. "*Trustee" Standard of Care*

The jury found that Camp acted as a trustee when he took responsibility for managing Evans's financial affairs. The jury also found that Camp was negligent in selecting and negotiating the purchase of West Lane Plaza and that Evans was damaged by this negligence in the amount of $730,516. Camp challenges this verdict on two grounds. First, he argues that the trial court committed prejudicial error because it did not instruct the jury on the standard of care applicable to Camp as a trustee in selecting investments or in negotiating the purchase of investments. Second, he contends substantial evidence does not support this verdict because there was no expert testimony as to the standard of care applicable to Camp in this context.

The jury was instructed only on the standard of care an attorney owes a client. Camp does not challenge those instructions. Instead, he contends the court should have given additional instructions on the standard of care a trustee owes a client in selecting an investment. In fact, he contends that the trial court represented that it was going to instruct on these duties. Evans responds that Camp has waived any complaint that the trial court failed to instruct on the duties of a trustee because Camp neither proposed any such instruction nor objected when no such instruction was given. We agree.

"'In a civil case, each of the parties must propose complete and comprehensive instructions in accordance with his theory of the litigation; if the parties do not do so, the court has no duty to instruct on its own motion.' [Citations.]" (*Agarwal v. Johnson* (1979) 25 Cal.3d 932, 950-951, overruled on another ground in *White v. Ultramar* (1999) 21 Cal.4th 563, 574 fn. 4.) During trial, the court told the parties that, absent contrary authority, it intended to instruct on only one of two theories: either that Camp owed Evans certain duties as a trustee in "investing and advising how to invest, handling someone's financial affairs and so forth" or whether Camp's duties were "duties as an

attorney for disclosure." At a later point in this discussion, Camp's attorney asked the court about Probate Code section 16047, "the one you said you were going to instruct on." The court rejected the suggestion that the theory on which Evans would be proceeding had been determined: "No. That's part of this issue of which 34 [sic] they elect." The court then went on to tell the parties, "if you feel that there's a different instruction that should be given than the present statute, prepare and submit to me the instruction." Camp did not object to the lack of such an instruction or to the special verdict form's inclusion of interrogatories regarding trustee negligence. It is beyond question that he was required to do so and that his failure waives this issue on appeal. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 841.)[4]

Camp also attacks the jury's conclusion that he was negligent in managing Evans's affairs with regard to the West Lane Plaza transaction. He argues that the jury could not make this finding without expert witness testimony and, therefore, there is no substantial evidence to support it. We disagree.

In *Easton v. Strassburger* (1984) 152 Cal.App.3d 90, 106 (*Easton*), we cited one court's observation that "'[t]he correct rule on the necessity of expert testimony has been summarized by Bob Dylan: "You don't need a weatherman to know which way the wind blows."'" Put another way, "'expert testimony is not required where a question is "resolvable by common knowledge." [Citations.]'" (*Id.* at p. 106.) For this reason, expert testimony on the standard of care is required most often in "'cases which depend upon knowledge of the scientific effect of medicine, or the result of surgery.'" In those cases, the standard of care "'must ordinarily be established by expert testimony of

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[4] In his reply brief, Camp contends that the trial court "refused" to instruct on the trustee's standard of care. Beyond citing to his attorney's declaration that he understood the trial court to say, in chambers discussions that are not in the record before us, that he intended to instruct on a trustee's duty of care, there is no evidence that Camp proffered such an instruction and that it was refused.

physicians and surgeons. [Citation.] This rule, however, applies only to such facts as are peculiarly within the knowledge of such professional experts and not to facts which may be ascertained by the ordinary use of the senses of a nonexpert.' [Citation.]" (*Ibid.*)

Here, the issue of whether Camp was negligent in advising Evans to invest in the West Lane Plaza shopping center does not turn on facts "peculiarly within the knowledge of . . . professional experts." (*Easton, supra,* 152 Cal.App.3d at p. 106.) As in *Easton*, "we believe that the jury could have found appellant negligent based on 'facts which may be ascertained by the ordinary use of the senses of a nonexpert.'" (*Ibid.*)

The jury was aware that Evans had no job or job prospects, no income and no liquidity. Despite this, Camp recommended that Evans invest most of his money to become the majority owner of a heavily encumbered shopping center in which he would be responsible for meeting cash calls. At the same time, Camp successfully recommended that Evans invest the rest of his available money in the Newman property, thus stripping Evans of the liquidity necessary to meet possible cash calls. The record supports the jury's conclusion that this recommendation was negligent: when the economy turned downward, as economies do, Evans did not have the money to meet the inevitable cash call. Instead, he mortgaged three small pieces of property and, without any income or assets to pay off these loans, lost these properties. Without a job or income, he was unable to himself secure refinancing of the $2.5 million loan on the shopping center. Because he was unwilling to transfer his majority interest into a limited partnership he did not control, the shopping center's managers did not refinance the loan and the property went into foreclosure. An expert witness was not required to tell the jury that Camp's advice in recommending this investment was negligent.

D. *Continuous Representation*

The jury also concluded that Camp acted negligently and breached his fiduciary duties in providing legal advice and services to Evans with regard to the West Lane Plaza property.

The court prepared special interrogatories in which the jury was asked to determine certain factual questions related to the statute of limitations on the attorney negligence claim. Among these was the following: "Did Plaintiff Thomas Evans discover, or through the use of the reasonable diligence required of a client should he have discovered, that defendant had acted negligently and that such negligence had caused him harm, prior to February 22, 1999." The jury answered this question in the negative. The jury was also instructed to answer a follow-up question only if it answered "yes" to the preceding question. This question is as follows: "When Plaintiff Thomas Evans discovered, or should have discovered, that defendant had acted negligently and that he had been damaged thereby, was defendant Thomas Camp still acting as attorney for Thomas Evans as to the investment in West Lane Plaza, and did he continue to so act until at least February 22, 1999." The jury left this question blank, as it had been instructed to.[5]

The statute of limitations on Evans's legal malpractice claim is one year from the date of his discovery of the wrongful act or omission. (Code Civ. Proc., § 340.6, subd. (a).) In a motion for judgment notwithstanding the verdict, Evans successfully argued that there was insufficient evidence on which the jury could base its finding that Evans did not discover, prior to February 22, 1999, that Camp had behaved negligently with regard to the West Lane Plaza transaction.[6] However, the court found that, given the undisputed facts, as a matter of law, under Code of Civil Procedure section 340.6, subd. (a)(2), the statute of limitations for attorney malpractice was tolled because Camp "continue[d] to

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[5] We note that Evans did not object to this aspect of the special verdict form. We do not, however, consider whether this argument has been waived, because we conclude that any error in instructing the jury was not prejudicial.

[6] The trial found that there was evidence that Evans knew Camp had behaved negligently in managing his investment because he had written to the California State Bar on August 4, 1997, and complained that "I have reason to believe Mr. Camp has improperly managed my finances, and may even have embezzled money from me . . . ."

represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred."

Camp does not challenge this ruling but instead argues the trial court erred because it did not submit to the jury two instructions he proposed on the concept of "continuous representation."[7] He contends the jury was given no guidance on the concept of continuous representation and, as a result, he was deprived of the opportunity to have the jury consider a basic theory of his case.

As Camp notes, we reverse for instructional error only when it seems probable that any such error prejudicially affected the verdict. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 580.) Without considering whether the trial court erred in not instructing the jury on the concept of continuous representation, we agree that the facts regarding Camp's continuous representation of Evans are not in any serious dispute and, as a matter of law, the statute of limitations was tolled under Code of Civil Procedure section 340.6, subdivision (a)(2).

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[7] Camp proposed two instructions. The first, entitled "statute of limitations for legal malpractice" read as follows: "An action against an attorney for a wrongful act or omission, other than for actual fraud, arising in the performance of professional services must be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission, which occurs first. In no event shall the time for commencement of legal action exceed four years except that the period shall be tolled during the time that the attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred." The second instruction, entitled "Continued Representation" is as follows: "For there to be continued representation sufficient to toll the statute of limitations on a civil action based on an attorney's wrongful acts or omissions there must be clear indicia of an ongoing, continuous, developing and dependent relationship between the client and the attorney. [¶] Application of the continuous representation doctrine envisions a relationship between the client and the attorney that is marked with trust and confidence. [¶] Continued representation is a relationship which is not sporadic but developing and involves a continuity of the professional services from which the alleged malpractice stems."

An attorney will be found to have engaged in continuous representation of a client so long as the attorney represents the client "on the same specific subject matter until the agreed tasks have been completed or events inherent in the representation have occurred." (*Crouse v. Brobeck, Phleger & Harrison* (1998) 67 Cal.App.4th 1509, 1528.) In *Crouse,* the attorney represented a client in the sale of her interest in a limited partnership. After the attorney lost the promissory note the client received from buyer, the attorney represented the client in agreeing to a novation. The court concluded that the statute of limitations had been tolled because the attorney had continued to represent the client in selling the interest and collecting on the note. (*Id.* at p. 1528; see also *Gold v. Weissman* (2004) 114 Cal.App.4th 1195, 1200.)

Evans hired Camp to help him invest in property and to manage these investments. These agreed on tasks did not end when Camp advised Evans to invest in the West Lane and Newman property but continued as Camp acted to salvage the exceedingly bad deals in which he had involved Evans. *Crouse* makes clear that when an attorney attempts to extricate a client from a botched transaction, the attorney engages in continuous representation of the client "on the same specific subject matter." Here, Camp's efforts to salvage this transaction continued into March 1999, when Camp acted to protect Evans's interests in the West Lane shopping center by filing a quiet title action with regard to real property associated with the shopping center. Similarly, in 1999, Camp attended a meeting in which he urged Evans to take certain steps to protect his interest in the shopping center. During 1999, Camp continued to hold a power of attorney to act on Evans's behalf. Given these facts, we conclude that, even if the jury had been instructed on the concept of continuous representation, it is not likely they would have found in Camp's favor on this issue.

E. *Punitive Damages*

The jury awarded Evans approximately $2,087,836 in compensatory damages and $80,000 in punitive damages. Camp argues this award is excessive. We disagree.

"Whether punitive damages should be awarded and the amount of such an award are issues for the jury and for the trial court on a new trial motion. All presumptions favor the correctness of the verdict and judgment." (*Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 387-388 (*Delvin*).) "An award of punitive damages will be reversed as excessive 'only when the entire record viewed most favorably to the judgment indicates the award was rendered as the result of passion and prejudice. [Citation.]'" (*Id.* at p. 388.) "The factors to be considered in assessing a punitive damages award are the nature of the defendant's acts, the amount of compensatory damages awarded and the wealth of the defendant. [Citation.]" (*Id*. at p. 389.)

Camp takes issue only with the third factor. **"**Because the purposes of punitive damages are to punish the defendant and to make an example of him, 'the wealthier the wrongdoing defendant, the larger the award of exemplary damages need be in order to accomplish the statutory objective' [citation], from which '[i]t also follows that the poorer the wrongdoing defendant the smaller the award of punitive damages need be in order to accomplish the statutory objective.'" (*Devlin*, *supra*, 155 Cal.App.3d at p. 390.)

Camp attempts to argue that his net worth is actually $81,500 and, therefore, the jury's award represents 98% of his net worth. This argument is specious. Camp can make it only by ignoring the rule that we indulge all inferences in favor of the judgment. In fact, the jury had before it substantial evidence, in the form of Camp's own testimony and financial documents, that established his net worth at $318,500.

We do not agree that this award "destroys, annihilates or cripples" Camp, as he contends. Camp took advantage of a position of trust and stripped Evans of $850,000. At the end of the day, Camp's net worth is now $238,500.[8] Evans's is considerably smaller. This award is not excessive as a matter of law and we uphold it.

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[8] This amount is "exclusive of retirement benefits."

IV. DISPOSITION

The judgment is affirmed.

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Haerle, Acting P.J.

We concur:

_____
Lambden, J.

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Ruvolo, J.